

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
MRS. E. B. HILL  
(McKenzie Building,  
H. H. Boyd, Owner),

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 743

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came as a formal hearing before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) in the Seattle facility of the State Board of Industrial Insurance Appeals on February 19, 1975.

Appellant Boyd was represented by Mrs. E. B. Hill, manager of the McKenzie Building. Respondent appeared through Keith D. McGoffin. Diane Attleson, Olympia court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were admitted.

2 From testimony heard and exhibits examined, the Pollution Control  
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d  
7 Ex. Sess., has filed with this Board a certified copy of its Regulation  
8 I containing respondent's regulations and amendments thereto.

9 II.

10 Section 9.03 of respondent's Regulation I makes it unlawful to  
11 cause or allow for more than three minutes in one hour a smoke emission  
12 darker in shade than No. 2 on the Ringelmann Chart. Section 3.29  
13 authorizes respondent to levy a civil penalty of not more than \$250.00  
14 for a violation of Regulation I.

15 III.

16 On July 11, 1972 there was emitted for six consecutive minutes from  
17 the furnace stack of the McKenzie Building, 712 North 34th Street,  
18 Seattle, King County, smoke in shade equivalent to No. 4 on the Ringelmann  
19 Chart. In connection therewith, respondent issued to appellant Notice of  
20 Violation No. 6494, but no civil penalty was assessed.

21 IV.

22 On September 30, 1974 there was emitted for six consecutive minutes  
23 from the McKenzie Building furnace stack smoke in shade equivalent to  
24 No. 3 on the Ringelmann Chart. In connection therewith, respondent issued  
25 to appellant Notice of Violation No. 9563 and Notice of Civil Penalty  
26 No. 1767 in the amount of \$50.00, which is the subject of this appeal.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 V.

2 On September 13, 1974, appellant ordered the replacement of the  
3 McKenzie Building's oil-fired furnace with natural gas-fired equipment  
4 designed to eliminate smoke emissions. This installation, costing  
5 appellant more than \$1,000.00, was completed on October 2, 1974.

6 VI.

7 Any Conclusion of Law hereinafter cited which is deemed to be a  
8 Finding of Fact is adopted herewith as same.

9 From these Findings, the Pollution Control Hearings Board comes to  
10 these

11 CONCLUSIONS OF LAW

12 I.

13 Appellant was in violation of Section 9.03 of respondent's  
14 Regulation I as cited in Notice of Violation No. 9563.

15 II.

16 In considering the reasonableness of Notice of Civil Penalty  
17 No. 1767, the Board notes the prior violation in 1972 for which no  
18 penalty was levied, but it also notes that appellant has spent a  
19 considerable sum of money in equipment which should avoid future violations  
20 of this kind. While Notice of Civil Penalty No. 1767 is only one-fifth  
21 of the maximum allowable amount, further mitigation would be reasonable.

22 III.

23 Any Finding of Fact herein recited which is deemed to be a  
24 Conclusion of Law is adopted herewith as same.

25 Therefore, the Pollution Control Hearings Board issues this

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

ORDER

The appeal is denied but appellant is directed to pay respondent \$25.00, the balance of \$25.00 to be suspended pending no similar violation for a period of six months from the date this Order becomes final.

DONE at Lacey, Washington this 24<sup>th</sup> day of February, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

Walt Woodward  
WALT WOODWARD, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER